IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.897 OF 2001

In the matter of the Companies Act, 1956;

AND

In the matter of winding up of M/s.Aarti Cable & Compounds Pvt. Ltd., a Company incorporated under the Companies Act, 1956 and having its registered office at 1, Laxman Niwas, Pawan Baug Road, Chincholi Phatak, Malad (W), Mumbai 400064.

Calchem Industriesd (India) Ltd.).. PETITIONERS

Mr.Vicky Singh with Mr.Sanobar Panigrahy i/b.M&M Legal Venture for the Petitioners.

Mr.Bharat Gandhi i/b.A.M.Saraogi for the Respondent Company.

CORAM : SMT. NISHITA MHATRE, J.

DATED: 9TH DECEMBER 2005

P.C.:

. This Petition has been filed by a Limited Company incorporated and registered under the provisions of the Companies Act. The Petitioners delivered 15000 kgs. of Activated Calcium Carbonate Hical-S costing Rs.1,69,832/- on the basis of a purchase order dated 18th June 1998 to the Respondent Company-M/s.Aarti Cable & Compounds Pvt. Ltd. It appears that the Petitioners did not receive any amount from the Respondent Company.

However, on 3rd May 2000, the Managing Director of the Respondent Company wrote to the Petitioners thanking them for their co-operation and requesting them to wait for one month as "we will be doing the payment from next month against your outstanding as we are in a very tight position".

2. One month elapsed. The Petitioners did not receive any payment. Therefore, on 16th April 2001, the Petitioners called upon the Respondent Company and its Directors by issuing a statutory notice under Sections 433 and 434 of the Companies Act through their Advocates to make payments of the amount due. On 19th May 2001, this letter was replied by the Advocate for the Respondent Company denying the purchase of any goods from the Petitioners. Since there was no payment forth coming, the Petitioners filed the present Company Petition on 16th August 2001.

3. The main contention raised by the learned Advocate appearing for the Petitioners is that there is no denial of their claim by the Respondent Company. In fact, by its letter dated 3rd May 2000 annexed to the Petition, the Respondent Company admitted that there were outstandings which were

payable to the Petitioners. He then submits that the denial of the debt contained in the Advocate's letter indicates that a bogus defence has been set up by the Respondent Company which should not be accepted by this Court. He submits that the Petition deserves to be allowed.

4. Mr.Gandhi, appearing for the Respondent Company, submits with great vehemence that the Petition ought to be dismissed on the following grounds :-

(i) The debt is barred by limitation as the Company Petition has been filed two months after the period of limitation elapsing;

(ii) There is a bona fide dispute about the delivery of the goods;

(iii) The Petition has been filed to exert pressure on the Respondent Company;

(iv) There is no specific purchase order and, therefore, the Petitioners have not proved their claim;

(v) The interest rate has not been agreed

upon by the parties;

(vi) There is no admission of the debt since admission has to be specific; and

(vii) The letter of 3rd May 2000 was written by the Respondent Company in respect of debts payable by its sister concern.

5. The learned Advocate for the Respondent Company has cited following judgments :

(i) Kahan Chand vs. Hadayat Ullah, AIR 1939 Lahore 7.

(ii) Atmaram Vinayak Kirtikar vs. Lalji Lakhamsi, AIR 1940 Bombay 158.

(iii) Firm Gulabrai Narain Das through L. Shiam Sundar Lal vs. Firm Ilahi Bux Mohammad Ayub through Mohammad Yakub, AIR (32) 1945 Allahabad 185.

(iv) Narayana Pillai vs. Narayanan Vanjakshi, AIR 1957 Kerala 93.

(v) Chikkam Koteswara Rao vs. Chikkam Subbarao and others, AIR 1971 SC 1542.

(vi) Gangadhar Narsinghdas Agrawal vs. Timple Pvt. Ltd., 1992 Company Cases (Vol.74) 846.

(vii) Vijayalakshmi Art Productionvs vs. Vijaya Productions Pvt. Ltd., 1997 Company Cases (Madras) 353.

(viii) Rishi Pal Gupta vs. S.J.Knitting and Finishing Mills Pvt. Ltd., 1998 Company Cases (Vol.93) 849.

(ix) Sham Lal Gupta vs. Hamco Industries (Pvt.) Limited, 1999 Company Cases (P&H) (Vol.97) 399.

(x) A.D.S.Builders Guild vs. Golden Tourist Resorts and Developer Ltd. and others, 2003 Company Cases (H.P.) (Vol.115) 171.

(xi) Tata Iron and Steel Co. vs. Micro Forge (India) Ltd., 2001 Company Cases (Vol.104) (Guj.) 533.

(xii) Jyothi Limited vs. Boving Fouress Limited, 2001 Company Cases (Vol.106 380.

(xiii) Manipal Finance Corporation Ltd. vs. CRC Carrier Ltd., 2001 Company Cases (Vol.107) 288.

(xiv) Lok Housing and Constructions Ltd. vs. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., 2002 CC 409.

(xv) Director of Settlements, A.P. and others vs. M.R.Apparao and another, (2002) 4 Supreme Court Cases 638.

6. There can be no quarrel with the propositions of law laid down in these judgments. However, it would be necessary to see whether the judgments apply to the facts in this case.

7. The first submission of the learned Advocate for the Respondent Company is that the debt is barred by limitation. According to him, Article 14 of the Limitation Act allows recovery of monies for goods sold and delivered only upto three years. The date of delivery is what is material. The date of delivery being 21st June 1998 i.e. the date of the Invoice, the limitation starts from that date.

The Company Petition has been filed on 16th October 2001, two months after the period of limitation having elapsed. He has cited the judgments in the cases of *Hamco Industries, Kahan Chand, Atmaram Kirtikar, Firm Gulabrai, Narayana Pillai, Vijayalakshmi Art etc.* (supra) in support of this submission.

8. The view taken by the Courts in the aforesaid cases is that the date of delivery of the goods is the starting point of time. In the present case, the Invoice indicates that the due date was 19th August 2001. The Petition has been filed on 16th August 2001 well within the period of limitation. The Invoice clearly indicates that the due date was 19th August 1998 and, therefore, the limitation starts from the next day. Apart from that, as rightly submitted by the learned Advocate for the Petitioners, there is an admission of the debt on 3rd May 2000. Therefore, the limitation would run from that date. The submission of the learned Advocate for the Respondent Company regarding limitation is also without merit.

9. It is then submitted by the learned Advocate for the Respondent Company that there is a bona fide dispute about the delivery of the goods and

the present Petition has been filed only in order to exert pressure on the Respondent Company. He relies on the judgment of this Court in *Manipal Finance* (supra). In my view, the alleged dispute which the Respondent Company is trying to make out is not at all genuine and has been raised only with a view to defeat the claim of the Petitioners. In reply to the statutory notice issued by the Petitioners, the Respondent Company denied having any dealings with them. However, this denial is issued only after the letter of 3rd May 2000 was received by the Petitioners, admitting that payment was to be made by the Respondent Company to the Petitioners. Apart from that, in the affidavit filed on 26th October 2005, there is no averment made that these goods were not delivered or that the letter dated 3rd May 2000 was written for an on behalf of the sister concern of the Respondent Company as is now contended by the learned Advocate for the Respondent Company. The defence raised by the Respondent Company is absolutely bogus and need not be considered.

10. The next submission of the learned Advocate for the Respondent Company is that the Petition has been filed to exert pressure on the Respondent Company. To buttress this argument, he places

reliance on the judgment of this Court in the case of *Manipal Finance* (supra). This Court while dealing with a winding up Petition had observed that there was a dispute and difference between the parties in respect of the implementation of a hire purchase agreement. A reference was already been made for arbitration of the dispute. In the facts and circumstances of that case, it was found that the Petitioner was trying to pressurise the Company to pay in spite of being fully secured under the personal guarantees of three persons and other security being available. The submission of the learned Advocate is unsustainable. No case has been made out to indicate that the Petition had been preferred only in order to exert pressure on the Company to make payment. In fact, it is the Company which has raised an unacceptable defence that the goods were not at all received by them and, therefore, no dues were payable by the Company.

11. The next submission, that there is no specific purchase order and, therefore, the Petitioners had not proved their claim before this Court, is also without any substance. As regards the submission that there was no specific purchase order, Exhibit "B" to the Petition, which is an

Invoice issued by the Petitioners, indicates that the purchase order was P.O. No.ACC-PO/14/98399 dated 18th June 1998. This indicates that there was indeed a purchase order placed by the Respondent Company for the purchase of the goods sent by the Petitioners.

12. The learned Advocate for the Respondent Company then argues that there is no admission of the debt and, therefore, the Petition should be dismissed. According to him, the admission must be specific. He relies on the judgment in the case of *Chikkam Rao* (supra) to submit that before the right of any party can be considered to have been defeated on the basis of an alleged admission, the implication of the statement made must be clear and conclusive. There should be no ambiguity or doubt in respect of the admission. The learned Advocate then cites the judgment in the case of *Director of Settlements, A.P.* (supra) to submit that the Supreme Court's decision is the *ratio decidendi* a decision and not a finding of fact. On this basis, he submits that the judgment in the case of *Chikkam Rao* (supra) is binding on this Court. There can be no dispute at all and it is needless to state that the judgments of the Supreme Court are binding on

this Court. However, merely because the Apex Court has held that an ambiguous admission cannot defeat the right of a party, it would not necessarily mean that this judgment would rescue Respondent Company from the clutches of law. A bare perusal of the letter of 3rd May 2000 shows that it is an obvious admission of the debt due and payable to the Petitioners. The learned Advocate for the Respondent Company has tried to make out a case that the letter was written by the Respondent Company in respect of the debts due and payable by its sister concerns. This submission is again far fetched and without any basis. There is not a single document on record indicating which were the sister concerns of the Respondent Company and what were the debts due and payable by them to the Petitioners. Nor is there anything on record to indicate that the letter was written on behalf of the sister concerns. There is not a single averment to that effect in the affidavit dated 26th October 2005 filed by the Director of the Respondent Company. In my view, therefore, defences raised by the Company are unsustainable and without merit.

13. The next submission of the learned Advocate for the Respondent Company was that the interest

rates had not been agreed upon by the parties. A bare perusal of the Invoice which is annexed at Exhibit "B" to the Petition shows that interest at the rate of 21% would be charged if the bill was not paid within the due date.

14. Apart from this, the learned Advocate for the Respondent Company also submitted that each entry in the books of account must be proved and summary proceedings should not be adopted for proving such entries. He places reliance on the judgment in the case of *Rishi Pal Gupta* (supra). This is a clear misreading of the judgment of Delhi High Court. The Court in that case held that the petition was based on the running account maintained between the parties and every year the accounts were sent to the Respondent and the Respondent Company made payments which were adjusted against the running account. It is in such circumstances that the Court held that summary proceedings under Section 433 of the Companies Act would not be the proper course but Civil Suit was the remedy available. In the present case, the debt was due and payable on account of the delivery of goods made on the basis of the Invoice at Exhibit "B" to the Petition. There was no running account and, therefore, this judgment is also

inapplicable.

15. In my view, the Petitioners have proved that the Respondent Company is unable to pay the debt due and payable to them. The Petition, therefore, deserves to be allowed.

16. Company Petition allowed in terms of prayer clauses (a) and (b).